

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROBERT TROY McCLURE,	§	
TDCJ NO. 1420457,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. H-14-1754
	§	
BRAD LIVINGSTON, et al.,	§	
	§	
Defendants.	§	

MEMORANDUM OPINION AND ORDER

Robert Troy McClure, a TDCJ inmate with a history of frivolous litigation, has filed a civil rights complaint alleging that he was subjected to living in a heated cell without a fan while incarcerated at the TDCJ Ferguson Unit. McClure filed an identical suit that was dismissed as barred pursuant to 28 U.S.C. § 1915(g). McClure v. Livingston, No. H-14-1749 (S.D. Tex. 2014). In dismissing the case the district court found that McClure was not in imminent danger, which would entitle him to an exception to § 1915(g)'s three-strikes rule. Id. The court also found that McClure had failed to exhaust the available administrative remedies. See 42 U.S.C. § 1997e.

The current complaint is McClure's second filing alleging heated cell conditions at the Ferguson Unit. Maintenance of the

instant action would be redundant and a waste of judicial resources. See Mayfield v. Collins, 918 F.2d 560, 561-62 (5th Cir. 1990). A prisoner's civil rights suit is malicious as a matter of law and is subject to dismissal where the suit raises claims that are duplicative of a prior suit filed by the same prisoner in federal court. See Pittman v. Moore, 980 F.2d 994, 994-95 (5th Cir. 1993). See also Blakely v. Evans, - F. App'x -, 2014 WL 2924920, *1 (5th Cir. June 30, 2014), citing Pittman. This prisoner action will be dismissed as malicious under 28 U.S.C. § 1915(e). Wilson v. Lynaugh, 878 F.2d 846 (5th Cir. 1989) (IFP complaints may be dismissed under § 1915(d) if they attempt to relitigate claims which have already been submitted by the plaintiff and rejected by the courts), citing Bailey v. Johnson, 846 F.2d 1019 (5th Cir. 1988).

Conclusion

Accordingly, based on the foregoing, the court **ORDERS** as follows:

1. The complaint ("Emergency" Motion to Proceed I.F.P. Under imminent danger exception of § 1915(g), Docket Entry No. 1) is **DISMISSED WITH PREJUDICE** as malicious. 28 U.S.C. § 1915(e).
2. The "Emergency" Order to Show Cause for an Preliminary Injunction & a Temporary Restraining Order (Docket Entry No. 2) is **DENIED**.
3. The Clerk is directed to provide a copy of this Memorandum Opinion and Order to the parties; the

TDCJ - Office of the General Counsel, P.O. Box 13084, Austin, Texas 78711, Fax Number 512-936-2159; and the Clerk of the United States District Court for the Eastern District of Texas, Tyler Division, 211 West Ferguson, Tyler, Texas 75702, Attention: Manager of the Three-Strikes List.

SIGNED at Houston, Texas, on this the 17th day of July, 2014.

A handwritten signature in black ink, appearing to read 'S. Lake', is written over a horizontal line.

SIM LAKE
UNITED STATES DISTRICT JUDGE